PATENT COOPERATION TREATY

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

International application No. 27 July 2004 30 July 2003	•	(1011	ON See Form PCT/IPEA/416
International application No. PCT/NZ2004/000165 27 July 2004 27 July 2004 30 July 2003 International Patent Classification (IPC) or national classification and IPC Int. Cl. 7 A61M 16/00 Applicant FISHER & PAYKEL HEALTHCARE LIMITED et al 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 25 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 7 sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. X (sent to the applicant and to the International Bureau) a total of 2 sheets, as follows; sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets eventaining rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). Sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. (sent to the International Eureau only) a total of (indicate type and number of electronic carrier(s)) containing Rectifications and explained thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). 4. This report contains indications relating to the following items: Box No. II Priority Box No. II Non-establishment of opinion with regard to novelty, inventive step or industrial applicability citations and explanations supporting such statement Box No. VI Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability citations and explanations supporting such statement Box No. VII Certain defects in the international application Date of submis			
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	E-mail address: pct@ipaust	ralia.gov.au	Telephone No. (02) 6283 2510

International application No.

PCT/NZ2004/000165

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

x No. I	Basis of the	report	- she international	application in the language in v	which it was filed, unless
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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/NZ2004/000165

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No. IV	Lack of u	nity of invention					1
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International application No.

PCT/NZ2004/000165

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement Box No. V

	Citations and the		
1.	Statement		YES
	Novelty (N)	Claims 1-9	NO
		Claims	YES
	Inventive step (IS)	Claims 1-9	NO
į		Claims	YES
	Industrial applicability (IA)		NO
		Claims	

2. Citations and explanations (Rule 70.7)

Novelty (N) Claims 1-9

Claims 1-3 Amended claims 1-3 meet the criteria set forth in PCT Article 33(2) for novelty. The prior art published before the priority date does not disclose a forehead rest including a deformable resilient member, said deformable resilient member having a top surface and a base connected by two side walls, said side walls being substantially thinner in width than said top surface, said side walls in use are compressible.

Amended claim 4 meets the criteria set forth in PCT Article 33(2) for novelty. The prior art published before the priority date does not disclose a forehead rest including a deformable resilient member being of a hollow conical shape where in use and under compression the top part of said hollow cone deforms or the side walls of said cone deform.

Claims 5-8

Amended claims 5-8 meet the criteria set forth in PCT Article 33(2) for novelty. The prior art published before the priority date does not disclose a forehead rest including a user-adjustable deformable resilient member.

See however the indication contained in Box VI "Certain documents cited".

It is noted that since claim 9 is defined by the accompanying figures of the specification, claim 9 may be considered as part of each group of claims for which the figures relate to.

Inventive Step (IS) Claims 1-9

Claims 1-3

Amended claims 1-3 meet the criteria set out in PCT Article 33(3) with regard to the requirement of Inventive Step because the prior art does not obviously suggest to a person skilled in the art a forehead rest including a deformable resilient member, said deformable resilient member having a top surface and a base connected by two side walls, said side walls being substantially thinner in width than said top surface, said walls in use are compressible.

Claim 4 Amended claim 4 meets the criteria set out in PCT Article 33(3) with regard to the requirement of Inventive Step because the prior art does not obviously suggest to a person skilled in the art a forehead rest including a deformable resilient member being of a hollow conical shape where in use and under compression the top part of said hollow cone deforms or the side walls of said cone deform.

64 9 3566990

P.13

International application No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY PCT/NZ2004/000165 Certain documents cited 30x No. VI 1. Certain published documents (Rule 70.10) Priority date (valid claim) Filing date (day/month/year) Publication date (day/month/year) Application No. (day/month/year) 6 September 2002 Patent No. 5 September 2003 18 March 2004 P, X WO 2004/022145 This document explicitly discloses all of the features of claims 5 and 7. See in particular page 20, lines 7-23 and Figs. 63-66. 2. Non-written disclosures (Rule 70.9) Date of written disclosure Date of non-written disclosure referring to non-written disclosure Kind of non-written disclosure (day/month/year) (day/month/year)

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P.14

International application No.

PCT/NZ2004/000165

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claim 7 is not clear because a claim cannot be appended to itself, but appears it should be appended to claim 5 instead.

Claims 6 and 8 are not clear because they are appended to claim 7, but appears they should be appended to claim 5 instead.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/NZ2004/000165

Supplemental Box

in case the space in any of the preceding boxes is not sufficient.

Continuation of: V.

Amended claims 5-8 meet the criteria set out in PCT Article 33(3) with regard to the requirement of Inventive Step because the prior art does not obviously suggest to a person skilled in the art a forehead rest including a user-adjustable deformable resilient member.

See however the indication contained in Box VI "Certain documents cited"

It is noted that since claim 9 is defined by the accompanying figures of the specification, claim 9 may be considered as part of each group of claims for which the figures relate to.

Industrial Applicability (IA) Claims 1-9

The invention defined in the claims is considered to meet the requirements of Industrial Applicability under Article 33(4) of the PCT because it can be made by, or used in, industry.

With regard to the document(s) listed in Box VI under "certain documents cited", these are documents published prior to the international filing date but later than the priority date claimed but which would otherwise be considered to be of particular relevance.

Under the PCT, novelty is considered only in respect of documents published before the priority date. The relevance of a document published after the priority date is dependent upon national law. Such documents are excluded from consideration in preliminary examination, under the PCT Guidelines but have been included here for information.

International application No. PCT/NZ2004/000165

A.	CLASSIFICATION OF SUBJECT MATTER				
Int. Cl. 7:	A61M 16/00				
According to	International Patent Classification (IPC) or to both i	national classification and IPC			
В.	FIELDS SEARCHED				
Minimum docu	mentation searched (classification system followed by cla	ssification symbols)			
Documentation	searched other than minimum documentation to the exter	nt that such documents are included in the fields search	ned		
	base consulted during the international search (name of d A61M, A62B and keywords (mask, rest, cushion		similar terms		
c	DOCUMENTS CONSIDERED TO BE RELEVANT				
Category*	Citation of document, with indication, where appr	opriate, of the relevant passages	Relevant to claim No.		
X	US 6119693 A (KWOK et al) 19 September Whole document	2000	1, 2		
X	EP 1205205 A2 (GOTTLIEB WEINMANN ARBEITSSCHUTZ GMBH & CO) 15 May 2 Whole document		1, 2		
x	DE 10045183 A1 (MAP MEDIZINTECHNII CO KG) 16 May 2002 Whole document	K FUR ARZT UND PATIENT GMBH &	I		
X	US 2003/0066531 A1 (GRADON et al) 10 A Whole document	pril 2003	1-4		
X F	urther documents are listed in the continuation	of Box C X See patent family anne	x .		
"A" documen	idered to be of particular relevance cor	er document published after the international filing date or pr filiet with the application but cited to understand the principl			
	oplication or patent but published on or after the "X" doe onal filing date or	derlying the invention cument of particular relevance; the claimed invention cannot cannot be considered to involve an inventive step when the c			
or which	is cited to establish the publication date of inv	ne cument of particular relevance; the claimed invention cannot volve an inventive step when the document is combined with th documents, such combination being obvious to a person sk	one or more other		
	nt referring to an oral disclosure, use, exhibition	cument member of the same patent family	anod in the art		
	nt published prior to the international filing date than the priority date claimed				
	Date of the actual completion of the international search Date of mailing of the international search report - 3 SEP 2004				
26 August 20		Authorized officer			
AUSTRALIAN PO BOX 200, V E-mail address:	Authorized officer AUSTRALIAN PATENT OFFICE O BOX 200, WODEN ACT 2606, AUSTRALIA R-mail address: pct@ipaustralia.gov.au Cacsimile No. (02) 6285 3929 Authorized officer SUE THOMAS Telephone No: (02) 6283 2454				

International application No.
PCT/NZ2004/000165

C (Continuation). DOCUMENTS CONSIDERED TO BE RELEVANT						
Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.				
P, X	US 2004/0045551 A1 (EATON et al) 11 March 2004 Whole document	1				
P, X	WO 2004/022145 A1 (RESMED LIMITED) 18 March 2004 Page 20, lines 7-23 Figs. 63-66	1, 7, 9.				

International application No. PCT/NZ2004/000165

Box No. II	Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)
This interna	tional search report has not been established in respect of certain claims under Article 17(2)(a) for the following
1.	Claims Nos.:
	because they relate to subject matter not required to be searched by this Authority, namely:
2.	Claims Nos.: because they relate to parts of the international application that do not comply with the prescribed requirements to such an extent that no meaningful international search can be carried out, specifically:
3.	Claims Nos.: because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a)
 	Observations where unity of invention is lacking (Continuation of item 3 of first sheet)
	ational Searching Authority found multiple inventions in this international application, as follows: ra sheet.
-	
1	As all required additional search fees were timely paid by the applicant, this international search report covers all searchable claims.
2. X	As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3.	As only some of the required additional search fees were timely paid by the applicant, this international search report covers only those claims for which fees were paid, specifically claims Nos.:
4.	No required additional search fees were timely paid by the applicant. Consequently, this international search report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:
Remark or	n Protest The additional search fees were accompanied by the applicant's protest.
	No protest accompanied the payment of additional search fees.

International application No. PCT/NZ2004/000165

Supplemental Box

(To be used when the space in any of Boxes I to VIII is not sufficient)

Continuation of Box No: III

The international application does not comply with the requirements of unity of invention because it does not relate to one invention or to a group of inventions so linked as to form a single general inventive concept. In coming to this conclusion the International Searching Authority has found that there are different inventions as follows:

- 1. Claims 1 to 5 are directed to a forehead rest for a respiratory mask including a deformable resilient member comprising a top surface and a base connected by two side walls, said top surface being substantially thicker than said side walls. It is considered that said top surface being substantially thicker than said side walls comprises a first "special technical feature".
- 2. Claim 6 is directed to a forehead rest for a respiratory mask including a deformable resilient member comprising a hollow conical shape. It is considered that the hollow conical shape of said deformable resilient member comprises a second "special technical feature".
- 3. Claims 7 to 10 are directed to a forehead rest for a respiratory mask including a user-adjustable deformable resilient member configured to in use rest against the face of a patient. It is considered that the adjustability of the deformable resilient member comprises a third "special technical feature".

It is noted that claim 11 is defined by the accompanying figures of the specification and, as such, unity of invention exists between claim 11 and each group of claims.

Since the abovementioned groups of claims do not share any of the technical features identified, a "technical relationship" between the inventions, as defined in PCT rule 13.2 does not exist. Accordingly the international application does not relate to one invention or to a single inventive concept, a priori.

Information on patent family members

International application No. PCT/NZ2004/000165

This Annex lists the known "A" publication level patent family members relating to the patent documents cited in the above-mentioned international search report. The Australian Patent Office is in no way liable for these particulars which are merely given for the purpose of information.

Patent Document Cited in Search Report							
US	6119693	US	6463931	US	2002148473	US	2003005935
		US	2004060561		•		-
EP	1205205	DE	10155152				
DE	10045183			·			
US	2003066531	AU	51876/01	AU	51877/01	ĄŪ	67947/01
		CA	2350351	CA	2350356	CA	2370995
		CA	2407118	CA	2413938	CA	2457277
		EP	1163923	EP	1163924	EP	1289590
	•	EP	1302212	EP	1306098	EP	1425060
•		JР	2002028240	JР	2002095751	NZ	508219
		NZ	514972	US	2002005201	US	2002014241
		ÜS	2003000533	US	2003062048	US	2003089373
		US	2003111080	US	2003154978	US	2003196659
		US	2003217746	US	2004035428	US	2004065327
		wo	0195965	wo	03022341	wo	03030978
US	2004045551	wo	2004021960				•
wo	2004022145	EP	1334742	, ЛР	2003175106	US	2003075180
		US	2004112384	US	2004112385	US	2004112387
		US	2004118406	wo	2004022144	wo	2004022146
		wo	2004022147				•

Due to data integration issues this family listing may not include 10 digit Australian applications filed since May 2001.

END OF ANNEX

Form PCT/ISA/210 (patent family annex) (January 2004)